

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s): Sherwin Shang et al.
Appl. No.: 09/917,136
Conf. No.: 3282
Filed: July 27, 2001
Title: AUTOCLAVABLE, NON-ADHERENT, HEAT SEALABLE POLYMER
FILMS FOR FABRICATING MONOLAYER AND MULTIPLE LAYERED
FILMS AND CONTAINERS
Art Unit: 1711
Examiner: Jeffrey C. Mullis
Docket No.: CPDI-5596A (112713-913)

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Commissioner for Patents
P.O. Box 1450
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APPELLANTS' REPLY BRIEF

Sir:

I. INTRODUCTION

Appellants submit Appellants' Reply Brief in response to the Examiner's Answer dated October 18, 2007 pursuant to 37 C.F.R. § 41.41(a). Appellants respectfully submit the Examiner's Answer has failed to remedy the deficiencies with respect to the Final Office Action dated January 22, 2007 as noted in Appellants' Appeal Brief filed on June 18, 2007 for at least the reasons set forth below. Accordingly, Appellants respectfully request that the anticipation and obviousness rejections of pending Claims 16-19 and 145-161 be reversed.

II. WOO IS NOT PROPER PRIOR ART

Appellants respectfully request that the Board reverse the anticipation and obviousness rejections because the Examiner has still failed to demonstrate that *Woo* is a proper prior art reference. For example, *Woo* fails to pre-date the earliest priority date supported by the present application. The present application is a CIP application and claims priority to U.S. Patent Application Serial No. 09/526,357 filed on March 16, 2000, now U.S. Patent No. 6,969,483 (the "*Parent*"). *Woo* has a filing date of March 16, 2000. As the *Parent* and *Woo* were filed on the same day, *Woo* does not have an earlier filing date with respect to the *Parent*. As a result, the present application has the benefit of a filing date of March 16, 2000 for all that is disclosed and supported in the *Parent*.

The Examiner asserts that *Woo* discloses all of the limitations of the present claims directed to a monolayer film comprising a polymer blend composed solely of a cross-linked first component and a second component that is not cross-linked. The sole support in *Woo* for the present claims alleged by the Examiner is from a Table found at columns 9-12 of *Woo* (the "*Table of Woo*"), which is identical to that found in the present application. Without providing any additional support, the Examiner summarily concludes that *Woo* must anticipate or render obvious the present claims because the *Table of Woo* is identical to the table in the present application.

In response, Appellants respectfully submit that the *Table of Woo* which provides the only basis for the Examiner's anticipation and obviousness rejections is also disclosed in the *Parent*. For example, the *Table of Woo* is identical to Table 2 found at columns 11-12 of the *Parent* ("*Table of Parent*"). Moreover, the *Table of Parent* is also identical to Table 2 found on page 21 of the present application. As a result, the present application has the filing date of the *Parent* with respect to this disclosure, and *Woo* does not pre-date the priority date of the present application. Simply stated, the *Table of Woo* is disclosed in the *Parent* and the present application and cannot be used as prior art with respect to the present application.

In sum, the currently pending application has the priority date of the *Parent* with respect to the information found in the *Table of Parent*. Appellants respectfully submit that the Examiner is improperly using a disclosure of *Woo* that is identical to that disclosed by the *Parent* to reject the pending application. For at least the reasons discussed above, *Woo* is deficient with

respect to the present claims. Accordingly, Appellants respectfully submit that *Woo* does not pre-date the present application and the anticipation and obviousness rejections should be reversed.

III. INDEPENDENT CLAIM 145 IS SUPPORTED BY THE PARENT APPLICATION

The Examiner asserts that the second component being “free of crosslinking” as recited in Claim 145 is not supported by the *Parent* and therefore has an effective filing date of July 27, 2001. Appellants respectfully submit that the Examiner’s characterization of the support for Claim 145 is incorrect and does not accurately present the proper test for establishing an earlier priority date under the patent law.

The test for determining whether the present claims are supported by the *Parent* is whether the *Parent* reasonably conveys to the skilled artisan that the Appellants had possession of the claimed subject matter at the filing date of the *Parent*. *Eiselstein v. Frank*, 34 USPQ2d 1467, 1470 (Fed. Cir. 1995). When the *Parent* and the present application are viewed in this light, Appellants respectfully submit that each element of independent Claim 145 is entitled to the filing date of the *Parent*.

The Examiner asserts that a single example is not sufficient to support the full scope of claims that recite various genuses and ranges. Appellants respectfully submit that one of ordinary skill in the art would recognize that the Appellants had possession of the presently claimed subject matter at the filing date of the *Parent* because the *Parent* provides more than one example for the second component. For example, the present application teaches that the second component may be a “non-readily cross-linkable polymer” such as a propylene-containing polymer or a single methyl-pentene-containing polymer. The non-readily cross-linkable polymer of the second component can also be a blend of two or more propylene-containing polymers, two or more methyl-pentene-containing polymers or a blend of at least one propylene-containing polymer and at least one methyl-pentene-containing polymer.

Specific examples of non-readily cross-linkable polymers are taught by the present application, for example, at page 14, line 20 to page 15, line 9. Examples of these same compounds are also disclosed by the *Parent*. See *Parent*, column 6, lines 15-23, and column 7, lines 28-58. The fact that the *Parent* does not describe them as non-readily cross-linkable

polymers does not make them distinguishable from the non-readily cross-linkable polymers taught by the present application. In fact, the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. Further, the *Parent* teaches that the second component is present in an amount by weight of the blend from about 45% to about 1%. See, the *Parent*, column 6, lines 2-23. Accordingly, numerous non-readily cross-linkable polymers that provide for a non-crosslinked second component as recited by Claim 145 and are taught by the present application are also fully disclosed and supported by the *Parent*.

The Examiner further alleges that the present application teaches a number of compositions such as cycloolefin monomers, cyclic dienes, and unsaturated substituents such as (meth)acryloxy that are readily cross-linkable. In response, Appellants respectfully submit that a listing of readily cross-linkable polymers by the present application does not mean that the listed non-readily cross-linkable polymers are not supported by the present application and the corresponding *Parent*. As previously discussed, many of the specific non-readily cross-linkable polymers taught by the present application are also taught by the *Parent*.

It should be noted that the Examiner asserts that dependent Claim 16 reciting 4-methylpentene-1 and Claim 19 reciting the first component being present in an amount by weight of from about 65% to about 75% is not supported by the *Parent*. In response, Appellants respectfully submit that these claims are also not disclosed or suggested by *Woo* and therefore are not anticipated or rendered obvious in view of same.

In sum, Claim 145 is supported by the *Parent* and not anticipated or rendered obvious by *Woo*. For at least the reasons discussed above, Appellants respectfully submit that Claim 145 and Claims 16-19 and 146-161 that depend from Claim 145 are novel, nonobvious and distinguishable from the cited reference and the rejections should be reversed.

IV. CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the Examiner's Answer does not remedy the deficiencies noted in Appellants' Appeal Brief with respect to the Final Office Action. Therefore, Appellants respectfully request that the Board of Appeals reverse the anticipation and obviousness rejections with respect to Claims 16-19 and 145-161.

No fee is due in connection with this Reply Brief. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112713-913 on the account statement.

Respectfully submitted,

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